

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MR. AND MRS. G. S. WENTWORTH,)
Appellants,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 79-43

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$25.00 civil penalty for outdoor burning having come on regularly for formal hearing on the 28th day of June, 1979, in Longview, Washington, and appellants Mrs. and Mrs. G. S. Wentworth appearing pro se, and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, records and files herein and having reviewed the Proposed Decision of the presiding officer mailed to the parties on the 11th day of July, 1979, and more than twenty days having elapsed from said service;

1 and

2 The Board having received no exceptions to said Proposed Decision
3 and the Board being fully advised in the premises; now therefore,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
5 Decision containing Findings of Fact, Conclusions of Law and Order
6 dated the 11th day of July, 1979, and incorporated by reference herein
7 and attached hereto as Exhibit A, are adopted and hereby entered as
8 the Board's Final Findings of Fact, Conclusions of Law and Order herein.

9 DATED this 7th day of August, 1979.

10 POLLUTION CONTROL HEARINGS BOARD

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12 DAVID AKANA, Chairman

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14 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I mailed, postage prepaid, copies of the foregoing document on the 10th day of August, 1979, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. and Mrs. G. S. Wentworth
2610 N.W. Madrona Street
Vancouver, Washington 98665

Mr. James D. Ladley
Attorney at Law
P. O. Box 938
Vancouver, Washington 98666

Southwest Air Pollution Control Authority
7601-H N.E. Hazel Dell Avenue
Vancouver, Washington 98665



LARENE BARLIN, ADMINISTRATIVE ASSISTANT
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MR. and MRS. G. S. WENTWORTH,)
Appellants,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent,)

PROPOSED ORDER

PCHB No. 79-43

FINDINGS OF FACT,
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AND ORDER

This matter, the appeal of a \$25.00 civil penalty for outdoor burning, allegedly in violation of the respondent's Section 4.01 of Regulation I, came on for hearing before the Pollution Control Hearings Board, William A. Harrison, Hearing Examiner, presiding alone, at Longview, Washington on June 28, 1979.

Appellant, Mrs. G. S. Wentworth, appeared and represented herself. Respondent appeared by its attorney, James T. Ladley. Reporter Betty Koharski reported the proceedings.

Witnesses were sworn and testified. Exhibits were examined.

EXHIBIT A

WAH/co

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these:

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
6 a certified copy of its Regulation I containing respondent's regulations
7 and amendments thereto which official notice is taken.

8 II

9 In March, 1979, following an ice storm which broke the branches of
10 trees in the area, appellants, Mr. and Mrs. Wentworth, determined to
11 dispose of branches and other material by outdoor burning in the yard
12 of their residence in Vancouver. Mrs. Wentworth therefore telephoned
13 the local fire department, Fire District No. 6, to inquire as to what
14 restrictions applied. The person receiving her call made no reference
15 to respondent's requirements, indicated no fire department permit was
16 needed and asked her not to call again for information on outdoor burning.

17 III

18 Thereafter, on March 11, 1979, Mr. Wentworth ignited a fire 4
19 feet in diameter in the back yard consisting of branches, blackberry
20 vines, an old croquet mallet and several painted boards, the latter
21 used for kindling. While on routine patrol, respondent's inspector
22 observed the above fire at 11:00 a.m., told Mr. Wentworth that it was
23 illegal and asked that it be extinguished. Mr. Wentworth was at first
24 uncooperative toward the inspector but eventually extinguished the fire.

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
28 AND ORDER

Appellants later received a Notice of Violation imposing a \$25 civil penalty for violation of Section 4.01 of respondent's Regulation I relating to outdoor fires. From this, appellants appeal.

IV

The respondent has established an outdoor burning policy allowing the burning of only natural vegetation on specific dates and not otherwise as a means to reduce the impact of such burning on air quality. During the period pertinent to this case, these dates were January 20 to 28 and April 13 to May 20, thus not encompassing the date of the fire in question.

V

Appellants have no prior record of any violation of the regulations of respondent.

VI

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these:

CONCLUSIONS OF LAW

I

The Legislature of the State of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. (RCW 70.94.740).

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 Pursuant to this and other legislative authority, the respondent has
2 adopted its Regulation I, Section 4.01(b)(2) which prohibits the burning
3 of:

4 asphalt, petroleum products, paints, rubber products,
5 plastic or any substance which normally emits dense
6 smoke or obnoxious odors
(emphasis added).

7 In burning painted lumber, appellants have violated this provision.

8 Even were there no prohibited materials being burned, such as
9 painted lumber, appellants violated Section 4.01(a) in burning natural
10 vegetation outside the dates prescribed by the respondent's outdoor
11 fire policy. (See Finding of Fact IV).

12 II

13 The Pollution Control Hearings Board has established a policy that
14 the good faith efforts of private citizens to comply with regulatory
15 provisions cannot be ignored by the regulatory agency involved and
16 such effort will be considered by this Board. Lloyd's of Washington,
17 v. PSAPCA, PCHB Nos. 868 and 869. In this case, the good faith efforts
18 of appellants to inquire of restrictions on outdoor burning were met
19 with misleading information from a responsible public official. Because
20 of this, and because appellants have no record of prior violations of
21 respondent's rules, the civil penalty in this matter should be suspended.

22 III

23 Any Finding of Fact which should be deemed a Conclusion of Law
24 is hereby adopted as such.

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 From these Conclusions, the Board enters this

2 ORDER

3 The \$25 civil penalty is affirmed; provided however, that it is
4 suspended on condition that appellant not violate respondent's
5 Regulations for a period of six months from the date of appellants'
6 receipt of this Order.

7 DONE at Lacey, Washington this 11th day of July, 1979.

8 POLLUTION CONTROL HEARINGS BOARD

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10 WILLIAM A. HARRISON,
11 Presiding Officer

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AND ORDER

CERTIFICATION OF MAILING

I, Carol Olson, certify that I mailed, postage prepaid, copies of the foregoing document on the 11th day of July, 1979, to each of the following-named parties at the last known post office address, with the proper postage affixed to the respective envelopes:

Mr. and Mrs. G. S. Wentworth
2610 N.W. Madrona Street
Vancouver, Washington 98665

Mr. James Ladley
P.O. Box 938
415 West 11th Street
Vancouver, Washington 98666

Southwest Air Pollution Control
Authority
7601 H N.E. Hazel Dell Avenue
Vancouver, Washington 98665

Carol W. Olson
Carol W. Olson, Secretary

FINDINGS OF FACT,
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